IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 100 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

A'BAD SARANGPURA MILLS CO.LTD.

Appearance:

MR B.B. Naik with Mr.MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 12/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question has been referred to this court under section 256 (1) of the Income tax Act,1961 (hereinafter referred to as `the Act'):

> "Whether on the facts and circumstances of the case,the amount of Rs. 20,000/- paid to the assessee towards interest and expenses and received by it during the accounting period, cannot be treated as assessee's income since appeal, before the Supreme court was pending?".

We have heard Mr. Naik appearing for the revenue. Nobody appears for the respondent assessee though the respondent has been duly served.

The short question which has arisen in this case is whether the amount of Rs. 20,000/- received by the assessee towards interest and expenses during the pendency of an appeal before the Supreme court under an order of the High court can be treated as income of the assessee.

The assessing officer added the said amount in the income of the assessee as the assessee had received the said amount . Being aggrieved by the said order, the assessee had filed an appeal before the Commissioner of Income tax (appeals).The appeal was dismissed by the Commissioner of Income tax (appeals). The assessee had thereafter filed an appeal before the Tribunal and the Tribunal had set aside the order of the Commissioner of Income tax (appeals).

Our attention has been drawn to the case of CIT vs. Bharat Iron and Steel Industries , (1993) 199 ITR 67, wherein it has been held by this court that when any amount has been received during the previous year during the pendency of proceedings before the court and when the amount so received is not the amount which has finally become payable to the assessee, the said amount cannot be treated as income of the assessee. Even in the present case, during the pendency of the appeal before the Supreme court, the assessee had received a sum of Rs. 20,000/- by virtue of an interim order. In our opinion, the Tribunal was right in holding that the said amount cannot be treated as income of the assessee and,therefore, the addition made by the assessing officer was rightly deleted by the Tribunal.

In view of the facts stated hereinabove and looking to

the law laid down by this court in the case of CIT vs. Bharat Iron and Steel Industries (supra), we answer the question in favour of the assessee and against the revenue. Reference stands disposed of with no order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh